

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
SAI MALENA JIMENEZ-FOGARTY

Plaintiff,

-v.-

THOMAS FOGARTY et al.,

Defendants.
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ORDER

24 Civ. 8705 (JLR) (GWG)

GABRIEL W. GORENSTEIN, United States Magistrate Judge

The Court has reviewed the pre-motion conference letters filed by the defendants. (Dockets ## 83, 97, 99, 101, 102, 103, 107, 108) as well as plaintiff's responses. The Court notes that at least four defendants, Andrea Labis, Marc Mednick, Sherri Eisenpress, and Thomas Zugibe, seek to move to dismiss due to insufficient service of process. (Dockets ## 97, 99, 101).

The Court believes that any motion to dismiss for insufficient service of process under Fed. R. Civ. P. 12(b)(5) must be decided in advance of any other motion — particularly since the grant of such a motion may engender a request to extend the time for service under Fed. R. Civ. P. 4(m) and, if the request for an extension were to be granted, the case might thereafter end up at different stages for different defendants.

Accordingly, any defendant who wishes to pursue a motion to dismiss under Fed. R. Civ. P. 12(b)(5) must file it by June 12, 2025. Any response shall be due June 20, 2025. Any reply shall be due June 27, 2025.

If no party files such a motion by June 12, 2025, the defense of insufficient service of process will be deemed to have been waived as to all defendants and the Court will thereafter set a schedule for briefing on the other proposed motions to dismiss.¹

SO ORDERED.

¹ In their letter, defendants Eisenpress and Zugibe mention that the improper service results in a lack of "personal jurisdiction." Docket # 99 at 2. It is unclear why defendants use this phrase. To the extent these (or any other) defendants seek to move to dismiss under Fed. R. Civ. P. 12(b)(2), any such motion must also follow the schedule set forth in this Order or the defense will be deemed to have been waived. See Fed. R. Civ. P. 12(h)(1).

Dated: June 4, 2025
New York, New York



GABRIEL W. CORENSTEIN
United States Magistrate Judge